

REMARKS

Claims 1, 4-18, and 21-31 are pending in the present application. Claims 1 and 5 are amended to include more technological limitations. Reconsideration of the claims is respectfully requested.

I. Summary of Telephone Interview

Applicants thank Examiner Clement Graham for the courtesies extended in the telephone interview on May 23, 2005. During the interview, Applicants argued that a "data processing system" is technological and has been interpreted as technology for many years. The Manual of Classification itself defines the 700 classes, like class 364 before them, to be "data processing." Clearly, the Office has interpreted data processing to be technological for quite some time. However, in the instant case, a "data processing system" is being interpreted to encompass a system of human beings. The Examiner proposed including limitations, such as a "computer" or a "processor." This raises a question as to why a "processor" is technological, but a "data processing system" -- a whole system of elements that process data -- is not technological.

Applicants also presented arguments regarding whether claims 1, 4-18, and 21-31 are anticipated by Boarman et al. These arguments are as described below.

II. 35 U.S.C. § 101

The Office Action rejects claims 1 and 4-12 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. To be statutory under 35 U.S.C. § 101, the claimed invention must produce a "useful, concrete and tangible result." *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (*Brenner v. Manson*, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)). The invention previously presented in claims 1 and 4 clearly produces a useful, concrete and tangible result and is in the technological arts, because the

invention submits a bid, in a data processing system, for each of a number of order bids based on a final equilibrium price. The invention previously presented in claims 5-12 clearly produces a useful, concrete and tangible result and is in the technological arts, because the invention sets a price, in a data processing system, for the number of order bids to form a final equilibrium price. One cannot say that the invention recited in claims 1 and 4-12 represented nothing more than an idea or concept, nor is the present invention simply a starting point for future investigation or research.

To advance prosecution, independent claim 1 and 5 are amended to include further limitations to technology. More particularly, claim 1 is amended to include a limitation of a server data processing system, wherein each bidding agent in the set of bidding agents is a computer implemented process executing in the server data processing system to generate bids on behalf of a buyer, and submitting a bid to a bid engine in the server data processing system for each bidding agent. Independent claim 5 is also amended to include a limitation of a server data processing system, wherein each order bid is generated by a bidding agent executing in the server data processing system to generate bids on behalf of a buyer, and setting a price, in a bid engine in the server data processing system, for the number of order bids to form a final equilibrium price. Applicants submit that these limitations cannot be interpreted to simply read on a non-technical data processing system.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-12 under 35 U.S.C. § 101.

III. 35 U.S.C. § 102, Anticipation

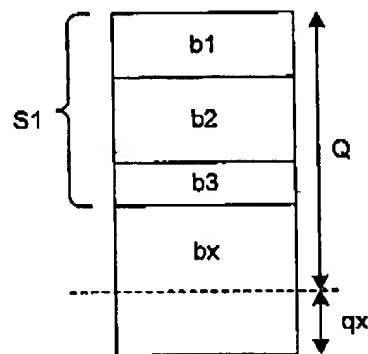
The Office Action rejects claims 1, 4-18, and 21-31 under 35 U.S.C. § 102 as being anticipated by *Boarman et al.* (U.S. Patent No. 6,609,112). This rejection is respectfully traversed.

Boarman teaches a system and method for providing proxy-based online Dutch auction services. Bidders provide proxies or bidding agents to submit bids without intervention from the human bidders. The auction manager sorts bids in accordance with proxy values. If a bid is encountered for which the requested quantity is less than or equal to the available quantity, then the bid is accepted and the quantity available value is

decremented. If a bid is encountered for which the requested quantity is greater than the available quantity, then the auction manager records a partial bid. See *Boarman*, col. 5, line 56, to col. 6, line 7.

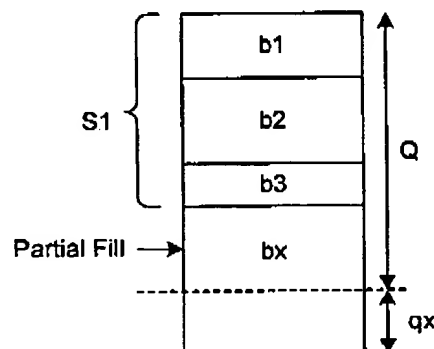
Boarman does not teach or suggest selecting a number of bids from the plurality of bids, wherein the number of bids is higher in the sorted set of bids than the first bid and wherein each bid in the number of bids has an allocation requirement less than the unallocatable portion of the first bid and setting a price for the number of bids to form a final equilibrium price, as discussed below.

The following illustration depicts a typical sorted set of bids in an auction:



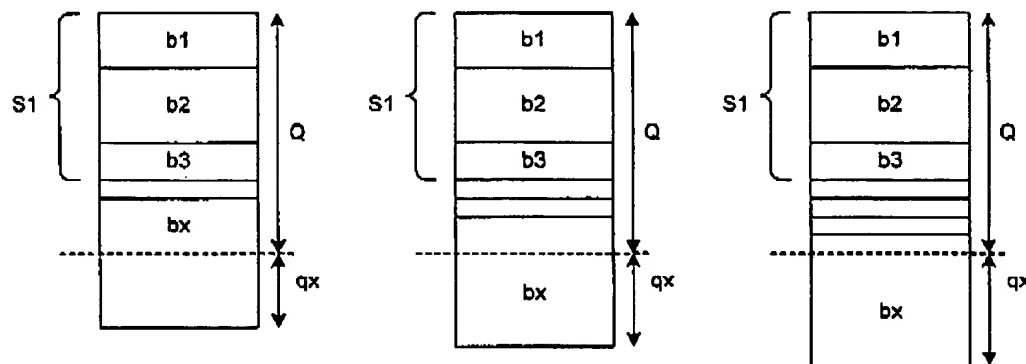
The bids are sorted from b1 to bx in order of price. Q is the quantity of product for bid. Each bid sets forth a price and an amount. The subset, S1, represents bids that can be fully allocated. Bid bx cannot be fully allocated, but may be partially allocated. Thus, the amount of qx is the amount that cannot be allocated.

Typically, as is the case with *Boarman*, the bids will be allocated as follows:



Thus, bids b_1 , b_2 , and b_3 are fully allocated and b_x is partially filled. Again, q_x is the unallocatable amount of the bids. With this bid ordering technique, a problem may arise with automated bidding agents. As described in the present specification, an order bid is a bid placed on behalf of a buyer who is unable to participate in the auction. An order bid is placed by a bidding agent. See the description of order bid services in the specification on at least page 11, line 27, to page 12, line 1.

These bidding agents may determine that a bid having a higher price than b_x and a quantity below q_x will beat out bid b_x . Consequently, two or more bidding agents may get into a "bidding war" and present many small bids, as shown below:

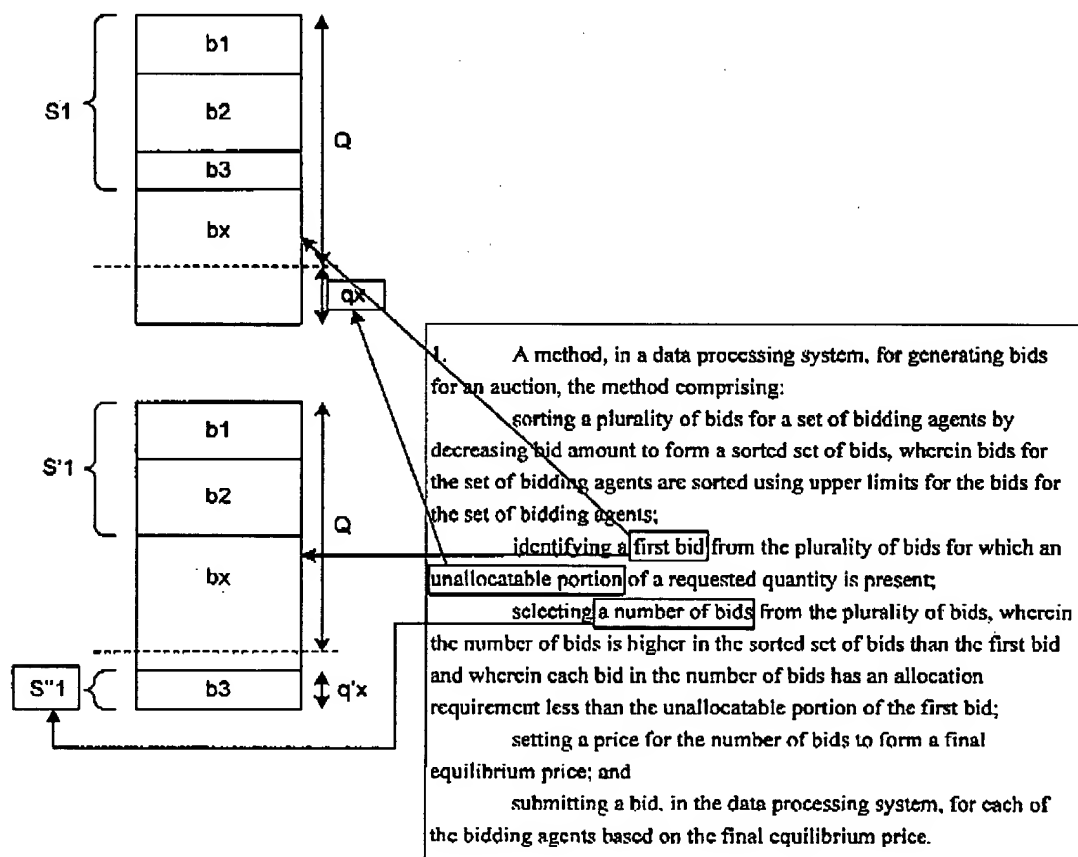


When there is a bidding war between two or more bidding agents, rather than human participants, the number of bids may become quite large. This causes the tables or other data structures storing the bids to grow quite large. Also, when a human bidder wishes to review bids to participate in the auction, the number of bids to review may become unmanageable. *Boarman* does not present a solution to this problem. Rather, in *Boarman*, a bidding agent will simply submit a bid that is the minimum bid plus a minimum increment.

In contradistinction, the present invention identifies a bid requesting a quantity for which an unallocatable portion is present and selects a number of order bids, wherein the number of order bids is higher in the sorted set of bids than the identified bid and each bid in the number of order bids has an allocation requirement less than the unallocatable portion of the identified bid. The present invention then selects a number of order bids from the sorted set of bids for which the requested quantity is less than or equal to the unallocatable portion.

Boarman is silent to the currently recited features of selecting a number of order bids that have an allocation requirement less than the unallocatable portion of the identified bid. *Boarman* does not teach setting a final equilibrium price for the selected number of bids. The Final Office Action does not address these limitations other than to conclude that they are taught in seemingly arbitrary and irrelevant portions of the reference.

The limitations of the invention, for example the invention recited in claim 1, as previously presented, are illustrated below. The following depiction is merely an example to illustrate the previously claimed features and is not meant to define or limit the claimed invention to the particular example shown. Also, the currently amended claim is not illustrated, because amendments are made for claim 1 to add technology to the claim and not to overcome the rejection under 35 U.S.C. § 102.



As illustrated above, if one or more bids are higher than b_x , but have an allocation requirement (q'_x) that is less than the shortfall (q_x), then a price is set for the bids to form a final equilibrium price. The bid proxies use the final equilibrium price, rather than the price of bid b_x plus a minimum increment, to submit a bid. This eliminates bid proxies from getting into a "bidding war" and submitting many small bids above b_x .

Independent claims 5, 13, 18, 22, 30, and 31 recite subject matter addressed above and are allowable for similar reasons. Since claims 6-12, 14-17, 21, and 23-29 depend from claims 5, 13, 18, and 22, the same distinctions between *Boarman* and the invention recited in claims 6-12, 14-17, 21, and 23-29 apply for these claims. Additionally, claims 6-12, 14-17, 21, and 23-29 recite other additional combinations of features not suggested by the reference.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1, 4-18, and 21-31 under 35 U.S.C. § 102.

Furthermore, *Boarman* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Office Action pointing out some teaching or incentive to implement *Boarman* to select bids that request a quantity that is less than an unallocated portion, one of ordinary skill in the art would not be led to modify *Boarman* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Boarman* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

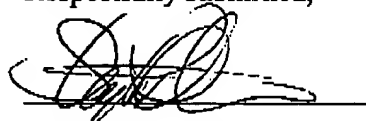
IV. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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